



FILED

05/07/19
02:55 PM

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking to Implement Senate Bill 1376 Requiring Transportation Network Companies to Provide Access for Persons with Disabilities, Including Wheelchair Users Who Need a Wheelchair Accessible Vehicle.

Rulemaking 19-02-012

ASSIGNED COMMISSIONER'S SCOPING MEMO AND RULING

This Scoping Memo and Ruling sets forth the category, issues to be addressed, and schedule of the proceeding pursuant to Public Utilities Code § 1701.1 and Article 7 of the Commission's Rules of Practice and Procedure.

1. Background

The State Legislature enacted Senate Bill (SB) 1376,¹ the "TNC Access for All Act," which requires Transportation Network Companies (TNCs) to provide services accessible to persons with disabilities through online-enabled applications or platforms, with a primary focus on wheelchair users who require a wheelchair accessible vehicle (WAV).

On March 4, 2019, the Commission initiated this Order Instituting Rulemaking (OIR), which summarized the substantive background of this proceeding. The OIR discussed the potential issues to be addressed in this

¹ Senate Bill 1376 (Hill 2018), Public Utilities (Pub. Util.) Code § 5440.5.

proceeding, and invited comments on the scope. In email correspondence to the service list, dated March 12, 2019, Administrative Law Judge (ALJ) Mason clarified that comments to the OIR should include Issues 1 and 2, with additional opportunities to comment on the remaining issues at a future date.

Comments were submitted by the Disability Rights Education and Defense Fund, Disability Rights California, and the Center for Accessible Technology (collectively, the Disability Advocates); HopSkipDrive, Inc. (HSD); Los Angeles County Metropolitan Transportation Authority (Metro); Los Angeles Department of Transportation (LADOT); Lyft, Inc. (Lyft); Marin Transit; San Francisco Municipal Transportation Agency, San Francisco Transportation Authority, and the San Francisco Mayor's Office on Disability (collectively, San Francisco); San Francisco Taxi Workers Alliance (SFTWA); Solano Transportation Authority (STA); Uber Technologies, Inc. (Uber); Via Transportation, Inc. (Via); and Zum Services, Inc. (Zum).

Reply comments were received from the Disability Advocates, HSD, Lyft, San Francisco, SFTWA, and Uber.

The Commission's Consumer Protection and Enforcement Division (CPED) held three workshops on a number of issues outlined in the OIR on December 5, 2018, February 15, 2019, and May 2, 2019. A prehearing conference (PHC) was held on May 2, 2019.

2. Issues

The scope of this proceeding was preliminarily set forth in the OIR. Based on the OIR, parties' comments to the OIR, and statements at the PHC, the scope of the proceeding is set forth below. This proceeding is divided into three separate tracks.

2.1. Track 1

Track 1 of this proceeding encompasses the Commission's implementation of time-sensitive issues as required by SB 1376. Track 1 is expected to be concluded by end of June 2019. The issues within the scope of Track 1 are as follows:

1. Establish the "TNC Access for All Fund" (Access Fund). Pub. Util. Code § 5440.5(a)(1)(C) requires the Commission to create an Access Fund and deposit moneys collected in accordance with § 5440.5(a)(1)(B) in the Access Fund.
 - a. What is the appropriate per-trip fee amount(s) to be collected from each TNC for trips completed using a TNC's online-enabled application or platform?
 - b. Should the fee be collected for all types of passenger charter-party carrier service trips, including trips provided by transportation charter-party (TCP) carriers (*e.g.*, UberBLACK), available on TNC apps?
 - c. How should the fee be presented to customers?
 - d. Should the Commission consider different program requirements (or different fee levels) for TNCs according to the number of trips they provide?
 - e. On what dates should the quarterly fees collected from TNCs and deposited into the Access Fund be due?
2. Designate Geographic Area(s). Pub. Util. Code § 5440.5(a)(1)(D) requires the Commission to select geographic areas based on the demand for WAVs within the area (as developed during required workshops) to be funded by the Access Fund and allocate money from the Access Fund to each area.
 - a. Within what geographic area(s) where TNC trips originate should per-trip fees be charged to customers? For example, should the geographic area be set at the level of each county where a TNC offers

service, or another area? Should all areas of the State be included in the geographic area?

- b. What geographic area(s) should be included in the on-demand transportation programs or partnerships to be funded by the Access Fund? For example, should the moneys in the Access Fund be available to programs or partnerships in all areas of the State, or in targeted areas?
- c. What publicly available quantitative information can be used to determine WAV supply and demand in specific geographic areas? What additional data needs exist to determine WAV supply and demand? Should programs or partnerships be required to submit and/or track data regarding supply and demand as part of their funding applications to the Access Fund?

2.2. Track 2

Track 2 of this proceeding encompasses less time-sensitive implementation issues as required by SB 1376. Track 2 is expected to be concluded by early Q1 2020. The issues within the scope of Track 2 are as follows:

1. Establish TNC Investment Offsets. Pub. Util. Code § 5440.5(a)(1)(B)(II) allows for offsets against quarterly Access Fund payments for “amounts spent by the TNC during that quarter to improve WAV service on its online-enabled application or platform for each geographic area and thereby reduce the amount required to be remitted to the commission.” To obtain an offset, a TNC, at a minimum, shall demonstrate “the presence and availability of drivers with WAVs on its online-enabled application or platform, improved level of service, including reasonable response times, due to those investments for WAV service compared to the previous quarter, efforts undertaken to publicize and promote available WAV services to disability communities, and a full accounting of funds expended.”

- a. What criteria should be used to evaluate whether a TNC has demonstrated “improved level of service, including reasonable response times due to their investments for WAV service compared to the previous quarter”?
- b. To avoid potential instability in Access Fund funding use and availability, should TNCs be required to state their advance intent to use or request offsets? If so, how far in advance?
- c. How and when should offset requests be presented to the Commission? How should offset requests be approved?
- d. Should offsets be capped a certain amount or percentage each quarter?
- e. What types of investments by TNCs can be counted for purposes of offsetting the amounts due to the Access Fund?
- f. What documentation or records, if any, should a TNC be required to provide to the Commission as evidence of “full accounting of funds expended”?
- g. For a TNC that receives an offset, when should reports, as required by § 5440.5(a)(1)(I), be submitted? What additional information, if any, should be included in these reports and should the reports be publicly available?
- h. Should offset eligibility be applied retroactively beyond the immediately preceding quarter? If so, how would the retroactive application work?

2. Establish Exemptions. Pub. Util. Code § 5440.5(a)(1)(G) allows a TNC to be exempt from paying the fee in a geographic area if, after the Commission adopts a “designated level of WAV service that is required to be met,” the TNC meets the set standard. The statute “requires a TNC, at a minimum, to have response times for 80 percent of WAV trips requested via the TNC’s online-enabled application or platform within a time established by the commission for that geographic area.” If a TNC meets the set requirement, the TNC is exempt from paying the fee for the next year for that geographic area.
 - a. What WAV service level requirements should be established?
 - b. How and when should exemption requests be presented to the Commission? How should exemption requests be approved?
 - c. What information should be used to establish the required response time for 80 percent of WAV trips requested?
 - d. Should TNCs be required to meet all WAV service level requirements for a certain period of time before receiving an exemption? If so, what duration should be used?
 - e. Should the Commission require TNCs to submit reports during the year it was granted an exemption in a geographic area? What information should be included in these reports and should the reports be publicly available?
3. Disburse Access Funds. Pub. Util. Code § 5440.5(a)(1)(E) provides a process for access providers to submit applications to receive moneys from the Access Fund any time after April 1, 2020. From the applications submitted, by July 1, 2020, the Commission is required to select on-demand transportation programs or partnerships to receive funding based on criteria adopted by the Commission in consultation with stakeholders. The criteria must include, at a minimum, demonstration by access providers of how they will improve WAV response times compared to the previous year, the

presence and availability of WAVs within the geographic area served, and efforts undertaken to publicize and promote available WAV services to disability communities.

a. Fund Disbursement Process

- i. Should a minimum or maximum amount of funding be disbursed to an access provider in response to an application?
- ii. Pursuant to § 5440.5(c), should the Commission retain an independent entity to administer the Access Fund program? What functions of the program should the program administrator fulfill? Should Access Fund moneys be used to fund the program administrator, or another source of funding?
- iii. Should the Commission prescribe what purposes moneys disbursed to access providers can be used for, such as maintenance and fuel costs, vehicle purchase and retrofitting costs, driver training, and time involved in providing wheelchair accessible trips?
- iv. Should the Commission directly grant funding to transportation carriers that it does not regulate (*e.g.* taxicab companies or entities that provide exclusively non-emergency medical transportation)?
- v. Should access providers that receive Access Fund funding be required to be available for chartering through TNC apps?
- vi. How should applications from access providers be granted or denied (*e.g.* via Commission resolution or by staff action)?

b. Funding Eligibility of Access Providers.

- i. What criteria should the Commission adopt to select access providers to receive funding?
- ii. What types of on-demand programs or partnerships applications should be considered?
- iii. Should governmental entities (*e.g.* cities, counties, metropolitan planning organizations, regional transportation planning agencies) be considered as access providers?
- iv. What financial information, if any, should applicants be required to submit regarding their operations? For example, should the access provider submit all streams of revenue, such as any other local, state, or federal funds the provider receives to provide WAV service?
- v. What considerations should be included in the access provider's application, including but not limited to, vehicle specifications, subsidies for wheelchair pickups, maintenance and fuel costs, designated pickup locations for drivers in locations where door-to-door service is not feasible, standards for trip requests, response times, and rider initiated cancellation, limiting of stranded users, integration of service into city and country transportation plans, availability and effectiveness of existing WAV service, or any necessary training or additional incentives for WAV drivers that result in a measurable impact on service availability, efficiency, and efficacy?

2.3. Track 3

Track 3 of this proceeding will consider the final implementation details as required by SB 1376. The schedule for Track 3 will be established in a Scoping

Memo issued at a later date, but Track 3 is expected to be concluded in the second quarter of 2020. The issues within the scope of Track 3 are as follows:

1. Develop Reporting Requirements. SB 1376's reporting requirements commence after July 1, 2020. However, the Commission may require reporting or data prior to that time in order to implement the statute.
 - a. For a TNC that receives an offset, when should the TNC submit the required reports, as directed by § 5440.5(a)(1)(I)? What information should be included in these reports and should they be publicly available?
 - b. Pursuant to Pub. Util. Code § 5440.5(a)(1)(J), what yearly benchmarks should be established for TNCs and access providers to meet to ensure WAV users receive continuously improved, reliable, and available service? In what form should TNCs and access providers submit such reports to the Commission, and should the reports be publicly available?
 - c. Pursuant to Pub. Util. Code § 5440.5(a)(2)(A), what information should be included in the report to the Legislature on compliance with the program and the effectiveness of on-demand transportation programs and partnerships funded by the program?
2. Establish Intervenor Compensation. Pub. Util. Code § 5440.5(a)(1)(K) allows for intervenor compensation to parties that successfully advocate in proceeding(s) to implement SB 1376, subject to the requirements of the existing intervenor compensation statute, Pub. Util. Code §§ 1803 – 1808. The intervenor compensation fund is set at no more than 2 percent of Pub. Util. Code § 421 fees, which the Commission collects from common carriers and related businesses as a condition of service.
 - a. The 2 percent intervenor compensation fund is based on the amounts remitted by carriers, including TNCs, to the Public Utilities Commission Transportation Reimbursement Account

(PUCTRA). The Commission currently affords confidential treatment to those remittance amounts. How can the Commission transparently calculate the funds available for intervenor compensation while protecting legitimately confidential financial information of TNCs?

- b. Does the phrase “existing funds collected from TNCs pursuant to [Pub. Util. Code] Section 421” require clarification?
 - c. Is Commission action needed on the meaning of “advocates for accessible transportation” or “representatives of a group whose membership uses accessible transportation” for the purpose of distributing intervenor compensation?
3. Address Additional TNC Accessibility Issues.
- a. What additional issues, if any, should be addressed in this proceeding related to the accessibility needs of persons with disabilities who do not require WAVs, including but not limited to, the needs of persons with hearing and vision impairments, persons who require the assistance of service animals, and/or ambulatory persons with disabilities?
 - b. Should changes to TNCs’ online-enabled applications or platforms be required to improve services for persons with disabilities?
 - c. Should TNCs be required to accept transportation subsidies in the form of substitutes for legal tender (*i.e.*, voucher or scrip), issued by governmental entities for WAV trips and other trips requested by persons with disabilities?
 - d. Should a complaint process be established to address rider or driver concerns? If so, what process?
 - e. Should a “Symbol of Access” be used by TNCs or access providers?

- f. Should TNC drivers be required to undergo disability sensitivity training?

3. Need for Evidentiary Hearing

In the OIR opening this proceeding, it was preliminary determined that hearings are not required. This Scoping Memo confirms the determination that hearings are not necessary; however, the assigned Commissioner or assigned Administrative Law Judge's may schedule hearings if the need arises.

4. Schedule

The following schedule is established for Tracks 1 and 2, subject to modification by the assigned Commissioner or assigned (ALJ).

Track 1 Calendar	
Comments on May 2 Workshop due	May 10, 2019
Proposed Decision on Track 1	Late May 2019
Final Decision on Track 1	Late June 2019

Track 2 Calendar	
Parties and CPED submit proposals on Track 2 issues	August 30, 2019
Workshop on Track 2 proposals	September 19, 2019
Comments on the workshop and all proposals	October 10, 2019
Reply Comments on the workshop and all proposals	October 25, 2019
Proposed Decision on Track 2	Q4 2019
Final Decision on Track 2	Early Q1 2020

The assigned Commissioner or assigned ALJs may modify this schedule as necessary to promote the efficient management and fair resolution of this proceeding. Track 3 will be scheduled at a later time. Due to the complexity and number of issues in this proceeding, it is the Commission's intent to complete this proceeding within 24 months of the date of the OIR's issuance.

Any workshops in this proceeding shall be noticed on the Commission's Daily Calendar to inform the public that a decision-maker or advisor may be

present at those meetings or workshops. Parties shall check the Daily Calendar regularly for such notices.

5. Category of Proceeding/ *Ex Parte* Restrictions

In the OIR opening this proceeding, the Commission preliminarily determined this proceeding is quasi-legislative. This Scoping Memo confirms the categorization. Anyone who disagrees with this categorization must file an appeal of the categorization no later than ten days after this Scoping Memo.

In a quasi-legislative proceeding, *ex parte* communications are permitted without restriction or reporting requirement pursuant to Article 8 of the Commission's Rules of Practice and Procedure.

6. Oral Argument

Unless comment is waived pursuant to Rule 14.6(c)(2) for granting the uncontested relief requested, motion for oral argument shall be by no later than the time for filing comment on the proposed decision.

7. Public Outreach

Pursuant to Pub. Util. Code § 1711(a), I hereby report that the Commission sought the participation of those likely to be affected by this matter by noticing it in the Commission's March 2019 monthly newsletter that is served on communities and businesses that subscribe to it and posted on the Commission's website.

In addition, the Commission served the Order Instituting Rulemaking on the following:

- The official service list for R.12-12-011;
- List of December 5, 2018 SB 1376 Workshop participants;
- List of February 15, 2019 SB 1376 Workshop participants;

- California Association for Coordinated Transportation;
- California Association of Councils of Government;
- California Department of Motor Vehicles;
- California Department of Transportation;
- California League of Cities;
- California Transit Association; and
- Rural County Representatives of California

8. Public Advisor

Any person interested in participating in this proceeding who is unfamiliar with the Commission's procedures or has questions about the electronic filing procedures is encouraged to obtain more information at <http://consumers.cpuc.ca.gov/pao/> or contact the Commission's Public Advisor at 1-866-849-8390 or 415-703-2074 or 1-866-836-7825 (TTY), or send an e-mail to public.advisor@cpuc.ca.gov.

9. Service of Documents on Commissioners and Their Personal Advisors

Rule 1.10 requires only electronic service on any person on the official service list, other than the ALJs. When serving documents on Commissioners or their personal advisors, whether or not they are on the official service list, parties must only provide electronic service. Parties must not send hard copies of documents to Commissioners or their personal advisors unless specifically instructed to do so. However, parties should send hard copies to the assigned ALJs.

10. Assignment of Proceeding

Liane Randolph is the assigned commissioner and Robert M. Mason III and Debbie Chiv are the assigned ALJs for the proceeding.

IT IS RULED that:

1. The scope of this proceeding is as set forth above.
2. The schedule of this proceeding is as set forth above.
3. The category of this proceeding is quasi-legislative.
4. Evidentiary hearings are not needed.
5. The assigned Administrative Law Judges are Robert M. Mason III and Debbie Chiv.

Dated May 7, 2019, at San Francisco, California.

/s/ LIANE M. RANDOLPH

Liane M. Randolph
Assigned Commissioner